

Petition of Western Massachusetts Electric Company for approval of the issuance of long-term debt securities in an amount not to exceed \$52 million in principal, pursuant to G.L. c. 164, § 14 and § 17A. In addition, the Company seeks an exemption from the competitive bidding requirements of G.L. c. 164, §§ 15 and 15A.))))))))	D.T.E. 03-82
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December 22, 2003

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demonstrated that the PSNF Trust proposal serves a legitimate purpose in meeting its service obligations or that the PSNF Trust proposal is consistent with the public interest. To the contrary, the PSNF Trust proposal would cause greater harm than benefit for the Company's customers. The Department should also reject the Company's PSNF Trust proposal because it would reduce mitigation of transition costs by allowing transition costs to increase in contravention of the Electric Restructuring Act of 1997 which requires electric utilities to maximize mitigation of generation-related transition costs.

B. PROCEDURAL BACKGROUND

On September 15, 2003, WMECo filed its Petition with the Department, together with the supporting testimonies of Randy A. Shoop and Jeffrey R. Cahoon.² Exh. WM-1; Exh. WM-2. The Company has re-filed its PSNF Trust proposal after withdrawing it from consideration in a prior docket, D.T.E. 02-49.³ On November 17, 2003, the Department issued an Order of Notice indicating that it would hold a public and evidentiary hearing on December 3, 2003. On December 3, 2003, the Department held a public and evidentiary hearing in this matter.

II. STANDARD OF REVIEW

The Department, in approving the issuance of long-term indebtedness by an electric or gas company, must determine that the proposed issuance meets two tests. First, pursuant to G.L. c. 164, § 14, the Department must assess whether the proposed issuance is reasonably necessary

² Randy A. Shoop is the Company's Assistant Treasurer and Jeffrey R. Cahoon is the Director of Revenue Requirements of Northeast Utilities Services Corporation, an affiliate of WMECo. Exh. WM-1, p. 1 and Exh. WM-2, p. 1.

³ In D.T.E. 02-49, the Company sought authorization to borrow up to \$105 million to refinance existing debt and to create and fund a trust for its PSNF liabilities. *See* D.T.E. 02-49, Petition. The Company moved to withdraw the PSNF proposal from consideration on June 13, 2003, approximately three months after the close of hearings and the submission of briefs.

to accomplish some legitimate purpose in meeting a company's service obligations. *Fitchburg Gas & Electric Light Company v. Department of Public Utilities*, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing *Fitchburg Gas & Electric Light Company v. Department of Public Utilities*, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine whether the Company has met the "net plant test" derived from G.L. c. 164, § 16. *Colonial Gas Company*, D.P.U. 84-96 (1984).

In approving the funding of a trust pursuant to G.L. c. 164, § 17A, the Department must determine that a proposal is "consistent with the public interest." G.L. c. 164, § 17A. The Department has indicated that it will approve a § 17A proposal if the public interest is at least as well served by approval of the proposal as by its denial. *Southern Union Company*, D.T.E. 03-3, p. 8 (2003); *Massachusetts Electric Company*, D.T.E. 01-104, p. 4 (2002), citing *Bay State Gas Company*, D.P.U. 91-165, p. 7 (1992); *Boston Edison Company*, D.P.U. 850 (1983). The Department bases its determination on the totality of what can be achieved rather than on any single gain that could be derived from the proposed transactions. *Id.*

In addition to the tests discussed above, the law requires the Company to maximize the mitigation of its generation related transition costs that it recovers from customers. G.L. c. 164, § 1G (c)(1)(iii), § 1G (a)(2), § 1G (b)(1), and G.L. c. 164, § 1G (d)(1).⁴ The Department may only

⁴ "[T]he applicable electric company, pursuant to subsection (d) of this section, has developed and will implement a plan for all required, necessary, and reasonable mitigation methods to reduce potential transition costs" G.L. c. 164, § 1G (c)(1)(iii).

Any electric company seeking to recover transition costs pursuant to this section shall, in accordance with the provisions of this subsection, mitigate any such transition costs. Prior to the approval by the department of any plan allowing for such recovery, the department shall issue an order finding that the electric company has taken ***all reasonable steps to mitigate to the maximum*** extent possible the total amount of transition costs that will be recovered and to minimize the impact of recovery of such transition costs on ratepayers in the commonwealth. G.L. c. 164, § 1G (d)(1)(emphasis added).

allow recovery of *any* generation-related transition costs from customers when the Company has shown that it has maximized the mitigation of those costs. *Id.*

III. ARGUMENT

A. THE DEPARTMENT SHOULD REJECT THE COMPANY'S PSNF TRUST PROPOSAL.

1. The Proposed PSNF Trust Would Harm Customers By Reducing Their Rate Of Return On Previously Contributed Funds.

The Department should deny the Company's request to incur debt to establish and fund the proposed PSNF Trust because the Company has failed to demonstrate that its PSNF Trust proposal is consistent with the public interest. To the contrary, the Company's PSNF Trust proposal would harm the Company's customers. Under the PSNF Trust proposal, WMECo would remove from the balance of unrecovered investments the \$51 million *credit* for spent nuclear fuel costs that the Company has already recovered from its customers as a component of its reconciling fuel charge. This amount represents monies that the Company will owe DOE.⁵ *See* Exh. AG-2, p. 11B, col. I for 2003. Removing the \$51 million credit would *increase* the balance of investment upon which the Company earns a return at its pre-tax overall weighted cost of capital of 11.85 percent, assuming the Company issues the proposed bonds. *See* Exh. AG-2, p. 12AA. The Company indicated that it would invest the PSNF funds in United States Treasury securities earning returns comparable to those of short-term risk-free investments that

⁵ WMECo would have to petition for, and obtain, express Department approval after evidentiary hearings before it could remove the \$51 million credit previously approved by the Department as a transition cost mitigation measure. G.L. c. 164, §1A(b)(1); §1G(d)(1); §1H (b)(2).

are currently achieving 1.1 percent returns. Tr. 1, p. 24.

If WMECo actually takes the investment steps it describes, it would significantly reduce the interest rate that the Company pays on the \$51 million in funds previously contributed by ratepayers, from 11.85% to approximately 1.1%. This change in interest rates would reduce the rate of return credited to customers on the \$51 million, resulting in an *increase* in the annual transition charge revenues paid by customers of approximately \$5.48 million annually. [\$51 million X (0.1185 - 0.011) = \$5.48 million]. Customers would have to pay that additional annual cost from the time WMECo invests in the trust until DOE actually takes the fuel and is paid from the trust, many years hence. Because the trust proposal would cause \$5.48 million per year of harm to customers, the proposal is not consistent with the public interest. *See Massachusetts Electric Company*, D.T.E. 01-104, p. 4 (2002), *citing Bay State Gas Company*, D.P.U. 91-165, p. 7 (1992); *Boston Edison Company*, D.P.U. 850 (1983). Assuming that the fuel will not be taken from the Millstone site until after Unit 3 is shut down in the year 2025, the total harm to customers could be over \$126 million. [\$126.0 million = \$5.48 million X 23 Years]. *See Western Massachusetts Electric Company*, D.P.U. 85-270, p. 104C (1986), Table 2B, showing the Department's 2025 expected life of Unit 3. The relatively minuscule sharing of the \$1.9 million savings from the proposed financing until the next rate case pales in comparison to the \$126 million that customers will lose. Exh. WM-2, Exh. JRC-1, p.1. The Department, therefore, should reject the PSNF Trust proposal because the proposed funding of the trust would harm customers.

2. The Company Has Already Recovered Every Dollar Of Spent Nuclear Fuel Costs Owed To DOE From Its Customers.

The Department should deny the Company's request to incur debt to establish and fund

the proposed PSNF Trust because the Company has not demonstrated that the PSNF Trust proposal serves a legitimate purpose in meeting its service obligations. WMECo proposes to issue securities to fund a trust for which the Company has already recovered all of the necessary monies from its customers. Tr. 1, p. 22. As a former partial owner of a nuclear power plant, the Company was required to pay DOE a one mil (one-tenth of a cent) per kilowatt-hour amount for the net kilowatts generated by the plant. *See* Petition, p. 1 and Nuclear Waste Policy Act of 1982. The Company has already recovered this amount from customers for its nuclear units as a component of its reconciling fuel charge. Tr. 1, p. 22. Since the Company has already recovered all of the funds from customers necessary to cover the amounts owed to DOE, and has those funds available, the Company does not need nor have legitimate purpose to issue securities to generate those funds. The Department, therefore, should not approve the requested use of the proceeds from the issuance. *See Fitchburg Gas & Electric Light Company v. Department of Public Utilities*, 395 Mass. 836, 842 (1985), *citing Fitchburg Gas & Electric Company v. Department of Public Utilities*, 394 Mass. 671, 678 (1985).

3. The Detriment To Customers Outweighs Any “Savings And Benefits” That The Company Proposes To Share With Customers.

The Company proposes to share with its customers the alleged “savings” and “benefits” associated with the proposed PSNF Trust. Exh. WM-2, pp. 5-7. The Company explains that the PSNF Trust proposal could benefit customers by reducing the Company’s cost of capital, which in turn would decrease the return on rate base. *Id.*, p. 5. The Company also claims that the PSNF Trust proposal would increase its net income by approximately \$2.4 million annually, which it proposes to share equally with customers. *Id.*, pp. 6-7. WMECo claims that “savings”

and “benefits” to customers would total approximately \$1.9 million annually. *Id.*, p. 7. The Company focuses on the upside of its PSNF Trust proposal while ignoring the downside of that proposal. While the PSNF Trust proposal may yield annual benefits of 1.9 million for customers through a lowered return on rate base and shared net revenues, it also would cost customers an additional \$5.48 million. The proposal would reduce the rate of return credited to customers on the \$51 million from 11.85% to approximately 1.1%, increasing the transition costs customers will have to pay. Any alleged “savings” or “benefits” of \$1.9 million annually to customers is outweighed by the \$5.48 million annual cost to these customers. The Department, therefore, should reject the PSNF Trust proposal since the harm to customers outweighs any alleged “savings” and “benefits.”

4. Under the Electric Restructuring Act of 1997, The Company Must Maximize Mitigation Of Its Generation-Related Transition Costs Recovered From Customers.

The Company will not meet its requirements to maximize the mitigation of its generation-related transition costs if the Department approves, and the Company implements, the proposed financing and PSNF Trust funding. G.L. c. 164, §1G (c)(1)(iii), §1G (a)(2), §1G (b)(1), and G.L. c. 164, § 1G (d)(1). The Electric Restructuring Act of 1997 allowed recovery of generation-related transition costs from customers as long as the Company showed and continued to show that it was making all reasonable efforts to maximize the mitigation of those costs. *Id.* Transition charges would increase as a result of funding the proposed PSNF Trust and removing the \$51 million credit from the rate base (upon which carrying charges are determined for the transition charge). The \$5.48 million increase is much greater than the proposed \$1.9 million amount of shared savings from the financing, both on an annual basis and on a lifetime

basis.⁶ The Department must deny the Company's proposed trust financing since it fails to meet the Company's requirements to maximize the mitigation of its transition costs. *See* G.L. c. 164, §1G (c)(1)(iii), §1G (a)(2), §1G (b)(1), and G.L. c. 164, § 1G (d)(1).

IV. CONCLUSION

For the reasons stated above, the Department should deny WMECo's request to incur debt to establish and fund the proposed PSNF Trust.

RESPECTFULLY SUBMITTED,

TOM REILLY
ATTORNEY GENERAL

By: _____
Wilner Borgella, Jr.
Assistant Attorney General
200 Portland Street
Boston, MA 02114
(617) 727-2200

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⁶ If the Company did not file for a base rate increase for 10 years, the potential benefit from the "shared savings" would only be \$19 million [\$19 million = \$1.9 million X 10 years], as compared to the \$126 million harm from the loss of the rate base credit in the transition charge.